

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR-08-27-GF-BMM

Plaintiff,

vs.

JOHNNY LYNN OLD CHIEF,

Defendant.

**FINDINGS AND  
RECOMMENDATIONS TO  
REVOKE DEFENDANT'S  
SUPERVISED RELEASE**

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**I. Synopsis**

The United States accused Mr. Old Chief of violating his conditions of supervised release by (1) failing to appear for Phase testing; and (2) failing to attend outpatient chemical dependency treatment. Mr. Old Chief admitted to the violations. His supervised release should be revoked, and he should be sentenced to six months in custody, with thirty months of supervised release to follow.

**II. Status**

A jury found Mr. Old Chief guilty of Aiding and Abetting Assault with a Dangerous Weapon on May 7, 2008. (Doc. 54.) United States District Court Judge Sam Haddon sentenced Mr. Old Chief to 120 months in custody followed by thirty-six months of supervised release on August 25, 2008. (Doc. 70.) He began his current term of supervised release on November 18, 2016.

The United States Probation Office filed a Report on Offender Under Supervision on December 12, 2016, detailing Mr. Old Chief's use of alcohol and illegal drugs and his failure to report for chemical dependency treatment. (Doc. 102.) The Probation Office filed a second Report of Offender Under Supervision on December 15, 2016, detailing Mr. Old Chief's continued use of alcohol. (Doc. 105.) United States District Judge Brian Morris allowed him to continue his supervised release with the understanding that he would attend chemical dependency treatment and bring himself into compliance with his conditions of supervised release.

### **Petition**

The Probation Office filed a Petition for Warrant for Offender Under Supervision on December 27, 2016, accusing Mr. Old Chief of violating the conditions of his supervised release by (1) failing to appear for Phase testing; and (2) failing to attend outpatient chemical dependency treatment. (Doc. 103.)

### **Initial appearance**

Mr. Old Chief appeared before the undersigned for an initial appearance on January 10, 2017, in Great Falls, Montana. Federal Defender Tony Gallagher accompanied him at the initial appearance. Assistant United States Attorney Ryan Weldon represented the United States.

Mr. Old Chief said he had read the petition and understood the allegations.

He waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

### **Revocation hearing**

Mr. Old Chief admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release.

Mr. Old Chief's violation grade is Grade C, his criminal history category is VI, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months. He could be ordered to remain on supervised release for thirty-six months, less any custody time imposed. The United States Sentencing Guidelines call for eight to fourteen months in custody.

Mr. Gallagher recommend a lenient sentence for Mr. Old Chief. Mr. Old Chief exercised his right of allocution and stated that he wanted to stay out of jail and spend time with his children and grandchildren. He also stated that he wanted to attend chemical dependency treatment. Mr. Weldon recommended a sentence of eight months in custody, with twenty-eight months of supervised release to follow.

### **III. Analysis**

Mr. Old Chief's supervised release should be revoked because he admitted violating its conditions. Mr. Old Chief should be sentenced to six months in

custody, with thirty months of supervised release to follow. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

#### **IV. Conclusion**

Mr. Old Chief was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Mr. Old Chief's objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

#### **The Court FINDS:**

Johnny Lynn Old Chief violated the conditions of his supervised release by (1) failing to appear for Phase testing; and (2) failing to attend outpatient chemical dependency treatment.

#### **The Court RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Old Chief's supervised release and committing him to the custody of the United States Bureau of Prisons for six months, with thirty months of supervised release to follow.

#### **NOTICE OF RIGHT TO OBJECT TO FINDINGS AND RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and

Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 12th day of January 2017.



John Johnston  
United States Magistrate Judge